

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

GARY TANNER,

Petitioner,

V.

KENNETH QUINN,

Respondent.

Case No. C08-5233RBL/JKA

REPORT AND RECOMMENDATION

NOTED FOR:
November 14, 2008

This habeas corpus action, filed pursuant to 28 U. S.C. 2254, has been referred to the undersigned Magistrate Judge pursuant to Title 28 U.S.C. §§ 636(b)(1)(A) and 636 (b)(1)(B) and Local Magistrates' Rules MJR 3 and MJR 4.

Petitioner filed a thirty-three page proposed petition with an incomplete application to proceed *in forma pauperis* (Dkt. # 1). In April of 2008, the Clerk's office informed him that they needed copies of the petition for service. (Dkt # 2). Petitioner was given until May 26, 2008, to provide service copies. Her did not comply with the Clerk's office request. The undersigned then recommended the petition to proceed *in forma pauperis* be denied because petitioner had funds. That Report and Recommendation was adopted (Dkt. # 8). Petitioner was given until July 28, 2008, to pay the filing fee.

Although the petitioner was over one month late, on September 2, 2008, he paid the filing fee. The case was again referred to the undersigned.

On September 15, 2008, the court ordered plaintiff to provide service copies of his petition (Dkt # 10). The court gave petitioner until October 17, 2008, to provide the copies and informed him a Report and Recommendation to dismiss the action would be filed if the copies were not received.

Petitioner has not complied with the court's order and instead filed motions. The first motion is titled "A copies of states motions and what this is my criminal case or what? Ask for counsel." (Dkt. # 11). The sum total of the motion states "Could a copies of states brief and let me know whats [sic] going on I take lots of medication and its hard to remember, things. Please take under consideration counsel attorney. Thank you for consideration." (Dkt. # 11). Petitioner's other motion asks for a 60 day extension of time to file an "informal brief." (Dkt. # 12).

Those motions have been denied by separate order and the court now recommends this action be dismissed for failure to prosecute. Plaintiff was informed the court needed service copies of his petition as early as April of 2008. In six months petitioner has failed to comply with the Clerk's office request. Further, in September of this year petitioner was ordered to provide service copies. He has not complied.

The court now recommends this action be **DISMISSED WITHOUT PREJUDICE** for failure to comply with a court order and for failure to prosecute the action. Pursuant to 28 U.S.C. § 636(b)(1) and Rule 72(b) of the Federal rules of Civil Procedure, the parties shall have ten (10) days from service of this Report to file written objections. *See also* Fed. R. Civ. P. 6. Failure to file objections will result in a waiver of those objections for purposes of appeal. Thomas v. Arn, 474 U.S. 140 (1985). Accommodating the time limit imposed by Rule 72(b), the clerk is directed to set the matter for consideration on November 14, 2008, as noted in the caption.

DATED this 28 day of October, 2008.

/S/ J. Kelley Arnold
J. Kelley Arnold
United States Magistrate Judge